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PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			REICHLER, KARIN M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/784,292
Filing Date: February 15, 2001
Appellant(s): FLETCHER ET AL.

MAILED
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Group 3700

Melanie I. Rauch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4-7-05.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed upon Appeal*

The appellant's statement of the issues in the brief is correct.

It is noted that Appellant has not raised the provisional double patenting rejection set forth in paragraph 11 of the FINAL rejection as a grounds of rejection to be reviewed. Note page 17, second and third full paragraphs of the 6-29-04 response.

(7) *Grouping of Claims*

Ground 1):

Appellant's brief includes a statement that claims 5 and 38 in Ground 6., 1) do not stand or fall together with Claims 1-2, 6-12, 14-21, 23, 25, 27, 29-30, 34, 36-37 and 39 and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Grounds 2)-5):

The rejection of the claims in each ground stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,304,162	KUEN	4-1994
5,374,262	KEUHN, JR. et al	12-1994
5,624,428	SAUER	4-1997
5,509,913	YEO	4-1996
4,944,734	WALLACH	7-1990
5,423,789	KUEN	6-1995
5,669,901	LAFORTUNE et al	9-1997

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5,549,593

YGGE et al

8-1996

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

The interpretation of the claim language “a waist edge nonparallel with a leg edge when the first and second side panels are in a laid flat configuration” is interpreted as set forth on page 11, last paragraph of the 2-9-04 response and is supported by page 29, lines 16-19, Figures 4-7 and page 5, lines 10-21 of the specification.

Ground 1):

Claims 1-2, 5-12, 14-21, 14-21, 23, 25, 27, 29-30, 34 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen ‘162 in view of Keuhn, Jr. et al, ‘262, and Sauer ‘428.

Claim 1: see Figures, chassis is 22, col. 3, lines 31-38, side panels are 40, col. 4, lines 16-19, fastening components are 56, col. 5, lines 55-56, mating fastening components are 42, 44, col. 4, lines 16-19.

Claim 2: see col. 4, lines 19-21 and col. 5, lines 55-56.

Claim 5: see page 31, lines 6-7 of the instant specification, i.e. “Material ... renders ... suitable...wipes”, in other words a material capable of use as a wipe. As defined by the American Heritage Dictionary, “wipe” is “To subject to light rubbing or friction, as of a cloth or paper, in order to clean or dry”. In other words a cloth or paper is deemed a material or structure

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capable of use as a wipe. See col. 10, line 50-col. 11, line 52 of Kuen which discloses cloth side panels. Therefore the Kuen device necessarily and inevitably includes the claimed structure.

Claim 6: see col. 4, lines 7-10.

Claim 7: see col. 5, lines 38-48.

Claim 8: see col. 5, lines 57-59.

Claim 9: see col. 4, line 7 (note “may” inherently includes “may not”), and col. 5, lines 38-48.

Claims 10-11: see col. 3, lines 23-24.

Claim 12: Applicant’s claim the side panels comprise a “durable” material, i.e. the side panel material has the capability of multiple reuse. Note page 3, lines 1-2, page 7, lines 11-16, the paragraph bridging pages 30-31 and page 39, lines 16-20 of the instant specification, i.e. side panels of elastomeric components such as laminates of ‘220 are reusable, i.e. “durable”. See col. 1, lines 11-26, col. 10, line 50-col. 11, line 11 of Kuen ‘162, i.e. the attachment system for use with disposable articles as well as reusable articles, i.e. underwear, bathing suits, includes side panels of elastomeric components such as laminates of ‘220, i.e. Kuen includes elastic panels of the same material as those disclosed by Applicants, i.e. the panels are necessarily and inevitably “durable”.

Claims 14-16: see discussion of claims 7-8 supra or col. 10, line 57-col. 11, line 13.

Claims 17-20: see col. 1, lines 11-20 and col. 3, lines 23-30.

Claims 21, 23, 25, 27, 29, 34, 36-38: see discussion of claims 1-2, 5-11, and 14-20 supra. Additionally see col. 4, line 55-col. 5, line 31, i.e. “preferably” does not require the preferred structure, i.e. desirably though not necessarily, i.e. the pads 42, 44 do not have to be spaced from

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the ends. Thus, the seams formed by the hook and loop fasteners can run from the waist opening to the leg openings.

Claim 30: see col. 5, lines 31-33.

Claim 39: see col. 6, line 38-col. 7, line 6, i.e. bonds form tearable, non-refastenable seams.

Therefore, the Kuen '162 device includes all the claimed structure except for the side panels each having a waist edge nonparallel with the leg edge when the first and second side panels are in a laid flat configuration, see Claim Language Interpretation section *supra*. The Kuen '162 device includes each panel 40 having waist and leg edges which are parallel in the laid flat configuration, see Figure 3 and col. 5, line 59, i.e. the strap member may be rectangular. However, at col. 5, lines 62-63, i.e. Kuen '162 also sets forth that material of region 50 can also be other shapes. See also Keuhn Jr. et al '262 at Figure 1 and Figure 6 and col. 5, lines 37-38, and col. 9, line 45-col. 10, line 2, i.e. panel or strap members which are releaseably connected or permanently connected to the back waist region but releaseably connected to the front waist region are interchangeable, and Figures 1 and 4, col. 8, lines 31-36 and col. 9, lines 1-5 of Sauer, i.e. panel or strap members which are permanently connected to the back waist region but releaseably connected to the front waist region and nonstretchable, stretchable, nonelastic, or elastic can be rectangular in shape or other shapes, e.g. triangular, elliptical, in which the waist edge is nonparallel with the leg edge when in a laid flat configuration. Therefore to make the panel waist edges which are parallel with the leg edges when in a laid flat configuration, i.e. the rectangular shape, of Kuen '162 panel waist edges which are nonparallel with the leg edges in a laid flat configuration, e.g. a triangular or elliptical shape, instead would be obvious to one of

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ordinary skill in the art in view of the interchangeability as taught by Keuhn Jr. et al '262 and Sauer.

Ground 2):

Claims 13, 31-33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162, Keuhn Jr. et al '262 and Sauer '428 as applied to claims 10, 21 and 34 supra, and further in view of Yeo '913 and Wallach '734.

Applicants claim flushability of at least one of or all of the cover, liner and absorbent of the chassis. Kuen teaches a disposable undergarment 20 including a cover, liner and absorbent and the desire for economic efficiency, see col. 3, lines 33-38 and col.9, lines 1-4 and 8-9, but not flushability of the cover, liner and absorbent. However, see col. 1, lines 16-23 and 29-40, col. 5, lines 27-29 and 49-52 and col. 22, Example 17, and col. 23, Examples 22-25 of Yeo and col. 1, lines 13-17 and 39-43, col. 2, lines 4-6 and col. 4, lines 21-25 of Wallach. To employ flushable components for at least one, if not all, of the cover, liner and absorbent of the Kuen disposable device as taught by Yeo and Wallach would be obvious to one of ordinary skill in the art in view of the recognition that such would provide more economic but environment disposability and the desirability of disposability and economic efficiency by Kuen.

Ground 3):

Claims 3 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162, Keuhn Jr. et al '262 and Sauer '428 as applied to claims 1 and 34 supra, and further in view of Kuen '789.

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Applicants claim the components of the fasteners on the side panels of loop material and the components of the fasteners on the front and back panels of the chassis being hook material whereas Kuen '162 teaches the opposite. However see Kuen 789, col. 3, line 65-col. 4, line 4, col. 5, lines 66-68, col. 9, lines 58-61. To reverse the components of Kuen 162 such that the side panel fastener components are loop material while the chassis fastener components are hook material instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Kuen '789.

Ground 4):

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162, Keuhn Jr. et al '262 and Sauer '428 as applied to claim 1 supra, and further in view of LaFortuna '901.

Applicant claims the fastening components of the side panels include two hook and two loop material components and the mating fastening components of the chassis include two loop and two hook material components, respectively, whereas Kuen teaches that the fastening components are all hook material and the mating fastening components are all loop material. However see LaFortuna, col. 8, lines 31-37 and col. 7, line 61-col. 8, line 14, i.e. the surfaces of the components that interlock with each other can be either hook or loop material as long as they lock with each other. To make the hook fastening components and loop mating fastening components of Kuen '162 fastening components including two hook and two loop material components and the mating fastening components including two loop and two hook material components, respectively, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by LaFortuna.

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Ground 5)

Claims 22, 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162, Keuhn Jr. et al '262 and Sauer '428 as applied to claim 21 supra, and further in view of Ygge et al '593.

Applicant claims the fastening material of the chassis being on the inner surface thereof while the mating fastening material of the side panel is on the outer surface thereof which is the opposite of what Kuen teaches. See Figures 1-7 and col. 5, lines 20-27 of Ygge. To make the chassis outside fasteners and the inside side panel mating fasteners of Kuen chassis inside fasteners and side panel outside mating fasteners instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Ygge et al.

(11) *Response to Argument*

Argument I.:

Claims 1-2, 6-12, 14-21, 23, 25, 27, 29-30, 34, 36-39:

Since Claim 1 is the broadest claim of this Group, the arguments will be addressed with regard to such claim.

Appellant's arguments on page 4, last two paragraphs and page 5, first two paragraphs have been considered but are deemed not persuasive. Specifically such remarks are not commensurate in scope with the teachings of Kuen at col. 5, lines 59-63 which do disclose or suggest other shapes but do not specifically list individual shapes. What col. 5, lines 59-63 does not disclose nor has any other evidence been provided to support is the argument by Appellant that the most logical shape of the pleated portion is rectangular. Such argument is also irrelevant

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since claim 1 does not require the waist edge be nonparallel along its entire extent to the leg edge along its entire extent, i.e. as claimed the side panels could also have rectangular portions.

Appellant's arguments on page 5, line 15-page 6, line 2 have also been considered but are deemed not persuasive because such arguments are narrower than the claim language. Claim 1 does not require a curved leg end edge nor any specific dimensions.

Appellant's arguments on page 6, line 3-page 7, line 20 have been considered but are deemed not persuasive. Specifically Appellant's arguments are again narrower than the claim language which does not require any specific portion of each edge be non-parallel to any other specific portion of the other edge. Furthermore the arguments are not commensurate in scope with the prior art. For example, Kuehn Jr teaches strap members in both embodiments, i.e. with only refastenable areas or both permanent and refastenable areas, can be of the same shape, e.g. rectangular. The portion of the device referred to by the Appellant as the "permanently connected area" whose edge is curved is denoted 24 in Figure 6, i.e. it is the backsheet not the strap member. The strap member is denoted 64. Sauer teaches that the straps, i.e. the entire strap members, can have a rectangular shape or a shape in which the edges are nonparallel, e.g. elliptical or triangular. Neither reference teaches the benefit of the permanently connected area versus the releasable connection area argued by Appellant, see sentence bridging pages 6-7 and page 7 at lines 12-18 of the Brief. Also just because one area is smaller than the other, does not require the smaller of the areas to have parallel edges as argued by Appellant.

Finally, Appellant's arguments on page 6, lines 3-7 and page 7, lines 18 et seq have been considered but are deemed not persuasive because the prior art combination applied which suggests nonparallel waist and leg edges of strap members when both ends of the members are

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releasably attached to a chassis is Kuen, Keuhn and Sauer not just Keuhn or Sauer alone or Keuhn and Sauer but not Keun. Therefore, Keun, especially at Figure 3 and col. 5, lines 59-63, Keuhn and Sauer suggest interchangeability between different shapes, i.e. parallel and nonparallel leg edges, of strap members when both edges are releasably connected to the chassis.

Claims 5 and 38:

Appellant's remarks on page 8, first full paragraph have been considered but are deemed not persuasive. Specifically, neither the claims nor the specification at page 31 require wipes of absorbent material or any specific absorbency, i.e. Appellant's arguments are narrower than the specification and claims. Furthermore the definition of the term "wipe" relied on by the Examiner defines what a material suitable for use as a wipe is, i.e. cloth or paper, i.e. defines structure, i.e. a "noun", not merely a "verb".

Therefore the ground of rejection 1) is deemed proper and maintained.

Arguments II.-V.:

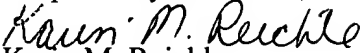
In each of these arguments Appellant argues that the prior art combination therein fails to teach the non-parallel side and waist edges of each side panel for the same reasons as set forth in Argument I. For the same reasons as those set forth supra in the response to Argument I, the arguments in II-V are also found not persuasive.

Therefore the grounds of rejection 2)-5) are deemed proper and maintained.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Karin M. Reichle

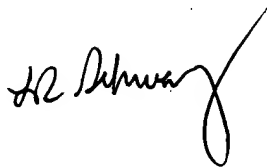
Primary Examiner

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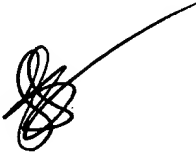
KMR

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